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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	Chapter 11
CCA Construction, Inc.,[1]	Case No. 24-22548 (CMG)
Debtor.	

DEBTOR'S OBJECTION TO MOTION OF BML PROPERTIES, LTD. FOR ENTRY OF AN ORDER (A) CONFIRMING DIRECT CLAIMS AGAINST CSCEC HOLDING COMPANY, INC., (B) GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY TO PURSUE POST-JUDGMENT RELIEF IN NEW YORK STATE COURT OR OTHER APPROPRIATE FORUM, (C) GRANTING DERIVATIVE STANDING TO PURSUE ESTATE ALTER EGO CLAIMS AGAINST CSCEC HOLDING COMPANY, INC., AND (D) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession, CCA Construction, Inc. ("**CCA**" or the "**Debtor**"), respectfully submits the following objection to the *Motion of BML Properties, Ltd.*

[1] The last four digits of the Debtor's federal tax identification number are 4862. The Debtor's service address for the purposes of this chapter 11 case is 445 South Street, Suite 310, Morristown, NJ 07960.

for Entry of an Order (A) Confirming Direct Claims Against CSCEC Holding Company, Inc., (B) Granting Limited Relief from the Automatic Stay to Pursue Post-Judgment Relief in New York State Court or Other Appropriate Forum, (C) Granting Derivative Standing to Pursue Estate Alter Ego Claims Against CSCEC Holding Company, Inc., and (D) Granting Related Relief filed on August 15, 2025 [Docket No. 442] (the "**Standing Motion**").[2, 3]

Preliminary Statement

1. At the heart of BLMP's motion is a clear misreading (if not a blatant misrepresentation) of the findings embodied in the Special Committee Report in connection with a potential action to pierce the corporate veil of CCA to reach the assets of CSCEC Holding Company, Inc. ("**CSCEC Holding**"). BMLP repeats, again and again, its cherry-picked line that the Special Committee [redacted] without in any way acknowledging the Special Committee Report's nuanced and thoughtful analysis about [redacted]. *See* Standing Motion, ¶¶ 1, 4, 12, 58, 59, 60, 64, 66. BMLP's oft-repeated

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Standing Motion. Reference is made to the *Report of the Special Committee of Independent Directors of CCA Construction, Inc.* [Docket No. 421] (the "**Special Committee Report**"). In support of the Standing Motion, BMLP has provided (i) certain email correspondence between counsel for BMLP and counsel for the Debtor attached as **Exhibit 1** to the *Declaration of Robert K. Malone, Esq. in Support of Motion of BML Properties, Ltd. for Entry of an Order (A) Confirming Direct Claims Against CSCEC Holding Company, Inc., (B) Granting Limited Relief from the Automatic Stay to Pursue Post-Judgment Relief in New York State Court or Other Appropriate Forum, (C) Granting Derivative Standing to Pursue Estate Alter Ego Claims Against CSCEC Holding Company, Inc., and (D) Granting Related Relief* [Docket No. 443] (the "**Email Exchange**") and (ii) the Judgment attached as **Exhibit 2** to the same declaration.

[3] Ms. Elizabeth Abrams ("**Ms. Abrams**"), the independent director of CCA's board of directors and sole member of the Special Committee of Independent Directors of CCA (the "**Special Committee**") previously provided the *Written Direct Testimony of Elizabeth Abrams in Support of First Day Pleadings and Debtor in Possession Financing* [Docket No. 159] (the "**Prior Abrams Testimony**"). The Debtor reserves the right to file any declaration or other evidence in support of this objection.

allegations could not be further from a fair reading of the Special Committee Report's thorough, [redacted] which speaks for itself.

2. In this pleading, it would be inappropriate and unwise for the Debtor and the Special Committee to make detailed arguments *against* the strength of a veil-piercing claim that the Special Committee has identified and is actively seeking to monetize. For the avoidance of doubt: the Special Committee will pursue any and all appropriate claims in a manner designed to maximize overall value of CCA's estate, and the Special Committee is engaged in active and ongoing discussions with CSCEC Holding to push for a global resolution of estate claims, including the veil piercing claim, in the context of a reasonable plan structure. The Special Committee's goal and intent is to extract meaningful value for the benefit of the estate.

3. In support of its efforts, the Special Committee Report [redacted]. As more fully described in paragraphs 25 through 29 herein and as expressly explained in the Special Committee Report, [redacted] which presents a far more nuanced picture, as

[4] The Special Committee Report explained that [redacted]

[5] The determination of [redacted] in the Special Committee Report is closer, as an analytical matter, to the concept of "colorable" claims as applied in the bankruptcy case law setting forth the legal requirements for a grant of derivative standing, as described in paragraph 42 herein. For this reason, BMLP is wrong when it calls the

described herein. All of that analysis must be taken into account in deciding the right path forward, and that is precisely what the Special Committee is doing.

4. The relief requested in the Standing Motion—particularly at the stage when it was filed, a mere 15 days after the release of the Special Committee Report and while BMLP knows that the Special Committee is in active discussions with CSCEC Holding—is at odds with fundamental Bankruptcy Code principles about who controls a bankruptcy estate and who runs a chapter 11 case. It is black letter law that, in chapter 11, the debtor in possession is the fiduciary responsible for managing the estate and making the decisions about maximizing overall value, including with respect to claims and causes of action.

5. Here, as this Court has already recognized, Ms. Abrams is a true independent director who is appropriately empowered as the sole member of the Special Committee to evaluate various restructuring alternatives, including the investigation of causes of action that may be held by CCA. The Special Committee engaged in a multi-month, methodical process, aided by estate professionals, to do just that. As more fully described herein, the Special Committee Report is the culmination of a good-faith and extensive process to do a fair and detailed analysis of all potential claims held by the Debtor's estate.

6. Notably, BMLP was permitted to comment on the scope of the Special Committee's investigation up-front, and the examiner BMLP advocated for (the "**Examiner**") participated in many of the witness interviews, reviewed key documents, and commented on a substantially final version of the report prior to its filing. Despite BMLP's dramatic predictions, the Special

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Special Committee Report an "unambiguous acknowledgement" of colorability for the purposes of the motion at hand.

Committee Report was anything but a "whitewash", and it speaks for itself as evidence of the Special Committee's diligence and good faith.

7. Since filing the Special Committee Report, the Special Committee has not stopped its efforts, which have been transparently described to BMLP as including the goal of a global settlement, if one can be reached, embodied in an appropriate plan structure. To that end, among other things, the Special Committee has directed professionals to perform a cost and recoverability analysis of the veil piercing claim, to provide important guidance to all parties as they evaluate what a settlement might include. Further, while Ms. Abrams may not have made a demand to CSCEC Holding in the exact words that BMLP might have wished her to use, she has clearly communicated that any resolution of claims in this case must ascribe full and fair value to those claims, satisfactory to Ms. Abrams in her independent judgment. All of this work is active and ongoing, and is being conducted alongside discussions with BMLP. BMLP's effort to disrupt the Special Committee's process is unfounded.

8. Importantly, BMLP has never sought to dismiss this chapter 11 case or have a trustee appointed (nor would there be cause to support such a motion), and it filed the Standing Motion before even waiting for the results of the Examiner evaluation that it had been championing. BMLP has been content to use chapter 11 to seek extensive discovery, and is now seeking to capitalize on the detailed analysis done by the Special Committee, all of which was funded by debtor-in-possession financing provided by the very party BMLP now seeks to sue. Having transparently benefitted from the process to date, BMLP should not now be permitted to subvert chapter 11's fundamental principles by substituting its own judgment for that of the Special Committee in terms of the next step in pursuing claims.

9. Under the law, neither BMLP nor any other party has the right to displace CCA's corporate governance process simply because CCA is not pursuing exactly the same strategy that BMLP would suggest, or because plan or settlement discussions are not happening on exactly the same timeline that BMLP would prefer, or in an effort to gain leverage in ongoing settlement negotiations. Case law makes clear that what matters is whether the Special Committee is utilizing its informed best judgment in an effort to move the chapter 11 case forward in a way that will maximize value, which is demonstrably the case here.

10. As detailed in this objection, BMLP can cite no serious legal basis for the relief requested. On derivative standing, which is reserved for exceptional circumstances, BMLP cannot carry its burden. BMLP's own purported evidence, an email exchange among counsel, shows that the Special Committee is fully cognizant of its obligation to maximize value, and is actively engaged in pursuing the veil piercing claim with that obligation in mind, with a goal to do so cooperatively with BMLP. BMLP simply has not seriously engaged in a viability or cost-benefit analysis with respect to the claim it seeks standing to pursue, which is fatal to its motion. As to its direct claim argument, BMLP again has no legal basis. Case law is clear that veil piercing and derivative-style claims constitute estate property and that, even if another party might have constitutional standing to bring such a claim outside of chapter 11, they are deprived of the authority to bring the claim by operation of the Bankruptcy Code. For these reasons, CCA respectfully submits that the Standing Motion should be denied in full.

Relevant Background

11. ***Judgment in New York Action.*** In December 2017, BMLP asserted certain claims in New York State court against three entities, CCA and two nondebtor defendants (but not CSCEC Holding), for breach of contract and fraud relating to the construction of the Baha Mar resort

complex in the Bahamas in the case styled as *BML Properties Ltd. v. China Construction America, Inc., n/k/a CCA Construction, Inc. et al*, Index No. 657550/2017 (Sup. Ct. N.Y. County).

12. In October 2024, after a bench trial, the New York court found in favor of BMLP on breach of contract and fraud claims and awarded a judgment, after accounting for pre-judgment interest, in the amount of approximately $1.64 billion (657550/2017, NYSCEF No. 764). As part of the Judgment, the New York trial court found that piercing the corporate veil among and between CCA and the other two nondebtor defendants was appropriate, though veil piercing provided the sole basis by which CCA was liable under the Judgment. The Judgment was virtually silent as to (non-party) CSCEC Holding, with the sole mention of the fact finding that, "[a]t the relevant time, the three [d]efendant entities were all subsidiaries of one parent company, CSCEC Holding Company, Inc" and that one individual held a management role at both CSCEC Holding and certain defendant entities. *See* Judgment, ¶¶ 167–68.

13. ***Chapter 11 and Appeals.*** In October 2024, CCA began contingency preparations by expanding its existing retention of Debevoise & Plimpton, LLP and then newly retaining Cole Schotz, P.C. ("**Cole Schotz**") as co-counsel and BDO Consulting Group, LLC ("**BDO**") as financial advisor. After CCA was unable to obtain a stay pending appeal of the Judgment, CCA filed this chapter 11 case on December 22, 2024. Since that time, CCA has operated as a debtor in possession throughout this chapter 11 case, meeting all chapter 11 requirements and otherwise managing its business in accordance with the Bankruptcy Code.[6]

[6] BMLP asserted that CCA has failed to comply with an order of the Court and otherwise meet its requirements to timely file 2015.3 reports. *See* Standing Motion, ¶ 32. This statement is false. CCA timely filed required reports on the docket on February 5, 2025 and August 5, 2025, in accordance with the Court's order and Bankruptcy Rule 2015.3. *See* Docket Nos. 116, 428.

14. CCA obtained relief from the automatic stay in December 2024 to pursue an appeal of the Judgment to the New York Appellate Division, First Department, of the New York Supreme Court. *See* Docket No. 53. In April 2025, the First Department affirmed the Judgment. *See* Case No. 2024-06623, NYSCEF No. 40. In May 2025, CCA again obtained relief from the automatic stay to file a petition for leave to further appeal to the New York State Court of Appeals, which has been filed and is currently pending as of the date hereof. *See* Docket No. 293.

15. ***Independent Investigation and Process.*** In October 2024, Ms. Abrams was appointed as an independent director to the board of CCA. *See* Prior Abrams Testimony, at 5. On November 2, 2024, Ms. Abrams was appointed as the sole member of the Special Committee, which is empowered to, among other things, (i) retain and work with professional advisors to obtain any "necessary or desirable analyses or opinions," to assess whether the terms of any restructuring transaction are advisable, fair, and in the best interest of CCA and its stakeholders and (ii) "to perform and cause to be performed any and all acts, on behalf of the [Debtor], as the Special Committee may deem to be necessary or appropriate in connection with the exercise of its authority[]". *See* Special Committee Report, at 13–14. *See also* Feb. 13, 2025 Hr'g Tr. 64:1-8, 70:18-71:4 (testimony of Ms. Abrams that the Special Committee was prepared to investigate potential claims against CSCEC Holding and other entities at the appropriate time).

16. Prior to her appointment, Ms. Abrams had not worked with CCA or its affiliates, nor the legal and financial advisors retained by the Debtor in this chapter 11 case. *See* Prior Abrams Testimony, at 4. At the hearing on February 13, 2025, the Court found that the Special Committee is independent and was reasonably appointed. *See* Feb. 13, 2025, Hr'g. Tr. 213:01-7 ("I think I can find from what I've heard today that the appointment of Ms. Abrams was a reasonable appointment and that that doesn't need to be examined [and] [t]hat she, she has been

effectively and fairly appointed as an independent [director.]"); *see also* May 22, 2025 Hr'g. Tr. 63:8-16.

17. *Scope of Investigation.* In early March 2025, the Special Committee began a process to investigate potential claims by authorizing Cole Schotz to conduct an investigation on its behalf, with BDO assisting. First, with advice of Cole Schotz, the Special Committee approved the initial scope for an investigation covering eight topic areas and included a review of:

[redacted]

[redacted] other claims and causes of action identified in the course of the Investigation."

See Special Committee Report, at 14–15. The Special Committee even afforded BMLP's counsel the opportunity to provide comments to the scope of the investigation, which the Special Committee reviewed and the vast majority of which were covered by the Special Committee Report. *See id*., n. 9; *see also* Special Committee Report, at [redacted]

18. *Work Plan Determination.* After approving the scope of the investigation, the Special Committee then worked with Cole Schotz to draft a work plan to determine how

professionals would investigate the topics. *See id*. at 15. In late March 2025, the Special Committee approved a four-part work plan for the investigation that would include: [redacted] *See id*. Further, BDO agreed to provide analyses to support the investigation and participate in each witness interview. *See id*. at 16.

19. *Investigation Process.* The nearly five-month investigation was thorough and followed the Special Committee's agreed work plan.

- Professionals began the process with scoping interviews of key CCA employees, executives, and counsel to [redacted] *See id*.

- With respect to document collection, professionals first provided a request list to CCA employees, which led to Cole Schotz's review of more than 2,600 unique documents. *See id*. at 16–18. Professionals then provided search terms to ten key individuals that were identified from the scoping interview process. These individuals used the search terms to gather and provide relevant emails and documents for purposes of the investigation. The initial search results led to the turnover of approximately 338,000 unique documents. *See id*. at 18. Professionals then applied more specific search terms within those 338,000 unique documents to enable Cole Schotz to perform a targeted viewed of more than 53,000 unique documents. *See id*.

- Next, the investigation process turned to witness interviews. Between mid-May and early July 2025, Cole Schotz and BDO together prepared for and conducted more than 40 hours' worth of interviews, which included sitting for approximately 16 interviews with ten key individuals, such as former board members, executives, and other high-level personnel. *See id*. at 19–20.

- As to the findings of the investigation, professionals met with the Special Committee on a weekly basis to provide updates on the status of the investigation. These meetings were documented with contemporaneous minutes, which were approved by the Special Committee. *See id*. at 15. Once Duane Morris LLP was retained by the Special Committee (as discussed hereinafter), Mr. Bauer of Duane Morris LLP joined these regular meetings to advise the Special Committee. *See id*.

- In support of the investigation, BDO performed numerous financial analyses [redacted] on topics such as: intercompany cash transactions, allocations between entities that were part of the shared services agreements, executive and employee compensation, funds flows, a solvency analysis, and a review of interest payments made. *See id*. at 20.

20. *Coordination with Examiner*. On March 5, 2025, upon motion of BMLP, the Court entered the *Order Granting the Appointment of an Examiner* [Docket No. 211]. On March 7, 2025, the Court approved the Office of the U.S. Trustee's appointment of Mr. Todd Harrison as Examiner. *See* Docket No. 296. On June 2, 2025, the Court entered the *Order Approving Examiner's Scope and Budget for Investigation* [Docket No. 351] directing the Examiner to promulgate a report by no later than September 15, 2025 to examine the "scope and process" of the Special Committee's investigation, which has not been filed as of the date hereof. By order of the Court, Mr. Harrison retained the law firm McDermott, Will & Emery LLP as legal counsel, effective April 29, 2025. *See* Docket No. 349.

21. Consistent with those orders, Cole Schotz coordinated the investigation with Mr. Harrison following his appointment. *See* Special Committee Report, at 23. Specifically, between late May and mid-July 2025, Mr. Harrison attended eight of the witness interviews and was afforded an opportunity to ask questions and suggest topics at those interviews. *See id*. Mr. Harrison (or his counsel) was also provided regular updates on the status of the investigation, along with key documents reviewed as part of the investigation. *See id*. at 23–24. Further, in late July 2025, the Special Committee afforded Mr. Harrison the opportunity to review and comment on a substantially final draft of the Special Committee Report prior to its finalization, which the Special Committee reviewed and incorporated into the final report as it saw appropriate. *See id*. at 24.

22. *Special Committee Counsel*. While the Special Committee disagreed with BMLP's prior aspersions that it was inappropriate for the Special Committee not to have separate counsel, on April 17, 2025, Ms. Abrams, in her capacity as sole member of the Special Committee, filed an application to retain the law firm Duane Morris LLP to "render independent legal services on behalf of, and at the sole direction of, the Special Committee" in furtherance of "the Special Committee's investigation of potential claims or causes of action of the Debtor, if any, against third parties." *See* Docket No. 255. Among other things, the Special Committee explained that the retention of Duane Morris LLP "has become more important given that BMLP has repeatedly put the Special Committee's independence at issue and the Debtor is now pivoting to discussions over how to move this chapter 11 case forward to conclusion." *See* Docket No. 320, at 4. On May 28, 2025, the Court entered an order approving the requested, effective April 9 2025, for all matters for which the Special Committee has been delegated authority, including the oversight of the investigation of potential causes of CCA. *See* Docket No. 343.

23. After this retention, Mr. Bauer of Duane Morris LLP has advised the Special Committee and attended the weekly meetings of the Special Committee that provided investigation-related updates. *See* Special Committee Report, at 15. In addition, Mr. Bauer has represented the Special Committee in multiple calls and discussions with counsel for BMLP, including hosting an in-person meeting with BMLP's counsel on June 17, 2025 to discuss the plan process and potential structures.

24. ***Special Committee Report.*** Ultimately, the investigation culminated in the comprehensive 111-page Special Committee Report supported by 270 pages of exhibits filed on July 31, 2025, which was prepared with great effort and at great expense to the estate. Relevant here, the Special Committee Report included [redacted]

[redacted]

25. While finding [redacted], the Special Committee Report provided [redacted], as excerpted below.

[redacted]

See Special Committee Report, at 71.

26. To reach the report's ultimate conclusion above, professionals did a nuanced analysis, applying the facts under Delaware law, which has two overarching elements, (i) whether the entities operated as a single economic unit, which, in turn, has at least seven sub-factors to consider and (ii) injustice or unfairness. In these efforts, the Special Committee Report was intended to be objective to enable the Special Committee to be informed in its pursuit of any claims, including any veil piercing claim, in the context of this chapter 11 case. A plain reading of this analysis shows the report concluded that: [redacted]

[redacted]

27. *Single Economic Unit.* On the single economic unit element, the Special Committee Report [redacted]. Noting that [redacted], *see* Special Committee Report, at 60, the Special Committee analyzed the factors as follows:[7]

- [redacted]
- [redacted]
- [redacted]

28. *Injustice or Unfairness*. The Special Committee Report noted that [redacted] *See* Special Committee Report, at 71. The report concluded that, [redacted] *See* Special Committee Report, at 71.

[7] *See* Special Committee Report, at 60–69.

29. Importantly, the Special Committee Report also noted that, [redacted] *See* Special Committee Report, at 75. At the direction of the Special Committee, BDO is currently concluding a high-level analysis of the recoverability of potential claims, including the veil piercing claim. The Special Committee anticipates that it will share BDO's findings on recoverability with BMLP, as has been discussed with BMLP counsel prior to filing this objection, and anticipates that such findings will help inform all parties' understanding as to the best path forward.

30. As evidenced in the Email Exchange cited by BMLP, the Special Committee is appropriately focused on maximizing overall value, and is working actively and collaboratively to that end. The cost recoverability analysis is a next logical step in furtherance of the Special Committee's ongoing and active efforts to press for meaningful settlement terms in the context of a plan structure. Such an analysis, along with an analysis of likely litigation cost and risks, is both typical and appropriate when considering the pursuit of potential causes of action, and to determine the actual value of potential claims.

31. Pursuing a consensual resolution in an attempt to avoid incurring litigation costs also is both typical and appropriate. To that end, Ms. Abrams and Mackenzie Shea of Berkeley Research Group, LLC (BRG) on behalf of CSCEC Holding have had numerous calls on this topic, the Special Committee's advisors have conferred with CSCEC Holding's advisors on multiple occasions (including a September 3, 2025, in-person meeting with client representatives), and the parties have also exchanged email correspondence since the August 7, 2025 hearing before the Court. *See* Aug. 7, 2025 Hr'g. Tr. 11:6-12:4 (previewing to the Court that upon completing their

review of the Special Committee Report the parties will further engage in discussions). Further, the Special Committee intends to work with BMLP on a consensual resolution, if one can be reached. This intent was expressed both in words, as reflected in the Email Exchange, and in action, as reflected in a meeting between representatives from CCA and BMLP on August 20, 2025, which the Special Committee expects to be one of many touchpoints between CCA and BMLP. The Special Committee believes this dialogue is active and ongoing, despite the rhetoric in BMLP's pleadings.

32. These steps do not preclude the Special Committee from pursuing claims against CSCEC Holding at the appropriate time. For the avoidance of doubt, the Special Committee has not in any way ruled out future litigation. That having been said, such a step would be premature at this time, and perhaps unnecessary overall.

33. Indeed, though it would be premature at this juncture to inform the Court or other parties of the specifics, CCA and CSCEC Holding representatives have been engaged in active and productive discussions throughout the recent days. CCA continues to believe its dialogue with CSCEC Holding will deliver meaningful recovery for the estate, and that a consensual resolution will maximize distributable value, if BMLP decides to engage constructively. CCA anticipates that discussions with the parties will continue before the hearing on the Standing Motion, and CCA looks forward to updating the Court on the status of those discussions at that time.

Objection

34. All relief requested in the Standing Motion should be denied.[8] Derivative standing cannot be granted because BMLP fails to carry its burden (and cannot do so) for a number of

[8] In the alternative, the Court should hold the Standing Motion in abeyance pending the parties' review of the forthcoming Examiner report and provide an opportunity for supplemental briefing thereafter.

reasons. First, contrary to BMLP's suggestions, CCA is itself is in the process of "pursuing" the veil piercing claim within the meaning of applicable case law. Not only has the Special Committee investigated the claim, as embodied in the fulsome analysis in the Special Committee Report, but the Special Committee is now performing a recoverability analysis, which will support a determination on the recommended course of action and, importantly, is a meaningful exercise to level-set expectations as to a reasonable settlement that would provide a full measure of value on account of estate claims, including the veil piercing claim. In contrast, BMLP has provided no serious cost-benefit analysis nor engagement with the colorability requirement for derivative standing, beyond citing excerpts of the Special Committee Report out of context. Importantly, BMLP cannot show that the Special Committee's actions as to the veil piercing claim—which may not reflect the precise wording of BMLP's demand but nevertheless constitute a valid and consistent path toward monetizing claims with a goal to maximize overall value—are unjustified. Any of these three issues provide independent grounds to deny derivative standing.

35. Next, with respect to BMLP's direct claim argument, binding case law is clear that veil piercing claims constitute property of the estate and, therefore, that BMLP is deprived of any authority to bring a direct veil piercing action, even if BMLP might have had such authority absent CCA's chapter 11 filing. BMLP's position on the direct claim argument is simply out of step with the law. Turning to the lift-stay argument, even assuming *arguendo* that BMLP could pursue veil piercing directly, the automatic stay would plainly apply: BMLP's intent to avail itself of a remedy at New York law would require that CCA be included in the proceedings as a necessary party. Accordingly, BMLP would need a modification of the automatic stay to move forward with any such proceeding. To that end, BMLP's motion fails to carry its burden to show cause because it completely overlooks the *balance* of hardship and prejudice to the Debtor while parroting its

mischaracterizations of the Special Committee Report, which is not sufficient to show probability of success on the merits.

I. Derivative Standing Should be Denied Because BMLP Plainly Fails to Carry Its Burden on Multiple Elements Required to Grant Relief.

36. As courts have consistently recognized, a grant of derivative standing is reserved for exceptional circumstances because it is at odds with fundamental policy principles of chapter 11, including the creation of an estate that includes all assets including causes of action, and the grant of authority to the debtor's management and board of directors to manage the estate in their business judgment so as to maximize overall value, and the aim, where possible, to prefer consensual resolutions of contested matters. Where a debtor (in this case, the Special Committee) is acting appropriately to pursue claims, derivative standing is not supported under the law.

37. In this district, four requirements have been articulated to support a grant of derivative standing:

> When considering whether to grant derivative standing to pursue actions on behalf of an estate, courts generally consider four elements: **(1)** a demand has been made upon the statutorily authorized party to take action; **(2)** the demand is declined; **(3)** a colorable claim that would benefit the estate, if successful, exists based on a cost-benefit analysis performed by the court; and **(4)** the inaction is an abuse of discretion (*i.e.*, unjustified) in light of the debtor-in-possession's duties in a Chapter 11 case.

In re Diocese of Camden, N.J., No. 20-21257 (JNP), 2022 WL 884242 (Bankr. D.N.J. Mar. 24, 2022) (emphasis added). Courts in the Third Circuit place the burden of proof on the movant to show all four elements by a preponderance of the evidence. *See, e.g.*, *In re Invitae Corp.*, Case No. 24-8550 (RK), 2025 WL 2538952, at *8, *10 (D.N.J. Aug. 11, 2025) (hereinafter referred to as the "***Invitae* District Court Opinion**") (stating that "[t]he party seeking derivative standing bears the burden of proof" and that the test "require[s] that the movant prove all

elements"); *In re G-I Holdings, Inc.*, 313 B.R. 612, 628 (Bankr. D.N.J. 2004); *In re Invitae Corp*., Case No. 24-11362 (MBK), 2025 WL 2314691, *6 (Bankr. D.N.J. July 7, 2025) (hereinafter referred to as the "***Invitae* Supplemental Findings**"); *In re Pack Liquidating, LLC*, 658 B.R. 305, 333 (Bankr. D. Del. 2024) (following other courts in the Third Circuit in placing the burden of proof on the movant for all elements). Here, BMLP has failed to prove multiple required elements. Accordingly, BMLP's request for derivative standing should be denied.

38. ***Element Nos. 1 and 2 – Demand Declined by the Debtor.*** BMLP made a "demand" on the Special Committee to assert a "10-figure settlement demand on CSCEC Holding now," and asserts that the Email Exchange indicates that this demand was denied. Nothing could be further from the truth: a plain reading of the Email Exchange makes clear the Special Committee's intent to pursue the veil-piercing claim in a way that would maximize value and its openness to further discussion with BMLP about how best to do so. [redacted] Four days after being told that the Special Committee would pursue the claim, and just hours after responding to set up a meeting for further discussion of the path forward, BMLP filed the Standing Motion.

39. Not following BMLP's exact instructions is not the same as refusing to pursue a cause of action – particularly when the Special Committee Report had been filed just two weeks prior, and the Special Committee was actively engaged in further analysis to understand recoverability and in discussion with both BMLP and CSCEC Holding. Courts have recognized

that a debtor's pursuit of a claim can include many actions, including both further analysis to decide the path forward, and engaging in settlement discussions. *See G-I Holdings, Inc.*, 313 B.R. at 630 (describing "pursuit" of a claim as "investigat[ing] and prosecut[ing]"); *In re Manley Toys Ltd.*, Case No. 16-15374 (JNP), 2020 WL 1580244, at *8 (Bankr. D.N.J. 2020) (characterizing engaging in settlement discussions as "pursuit" of a claim). Further, courts in this circuit have also viewed granting derivative standing as inappropriate where a party seeks to second-guess or backseat drive a debtor's approach to resolve a specific claim. *See Wilton Armetale, Inc.*, 968 F.3d at 283–84 ("[T]he Bankruptcy Code makes a creditor's derivative causes of action property of the estate. From there, the trustee decides how to best manage them for the benefit of all creditors.").

40. Here, BMLP's own evidence cuts against BMLP's position by indicating that the Debtor is precisely engaged in the "pursuit" of the claim. [redacted]

And, in the weeks since that time, the Special Committee has been actively moving forward with both a recoverability analysis and active discussions with CSCEC Holding to press for monetization of claims held by the estate.

41. BMLP's argument boils down to an assertion that the Debtor "declined" to pursue the veil piercing action because no Debtor representative has agreed to do *exactly what BMLP wants, the way BMLP wants it to happen.* This difference of opinion about strategy does not provide a basis for derivative standing.

42. ***Element No. 3 – Colorable Claim Benefitting the Estate.*** Courts within the Third Circuit conduct a searching analysis when determining whether a claim is "colorable" for purposes of derivative standing, and the meaning given to that term in the context of the standing analysis

is consistent with the usage of the word [redacted] in the Special Committee Report. The colorability analysis includes at least three considerations: (i) whether the complaint would survive a motion to dismiss for failure to state a claim under the *Twombly* standard, *see Diocese of Camden*, 2022 WL 884242, at *4; (ii) the degree to which there are defenses to the claim, *see G-I Holdings, Inc.*, 313 B.R. at 631 and *Diocese of Camden*, 2022 WL 884242, at *4; and (iii) the degree to which litigating the claim would be fact-intensive or involve the resolution of complex legal issues, *see In re Invitae Corp., et al.*, Case No. 24-11362 (MBK) (Bankr. D.N.J. July 15, 2025) (Docket No. 793) (Bench Ruling) (hereinafter referred to as the "***Invitae* Bench Ruling**"), *aff'd* by *Invitae* District Court Opinion. Under the banner of colorability as used in the derivative standing case law, a court need not conduct a mini-trial or make any determinations on the likelihood a claim may succeed, and a court is well within its right to acknowledge and afford weight to the fact that a final ruling on a relevant claim would require resolving factual and legal complexities. *See Invitae* District Court Opinion, at *10–13.

43. Against the backdrop of this high legal standard, BMLP's standing request fails. BMLP makes much hay out of the [redacted] in the Special Committee Report, which was clearly defined in the Special Committee Report as [redacted] this differs from the *Invitae* standard set forth above. *See* Special Committee Report, at 2. Looking beyond BMLP's repeated citations of [redacted] BMLP's request lacks sufficient substance to state a claim that would support a standing request.

44. As previously noted, the Special Committee should not and will not denigrate CCA's own causes of action in this pleading. The detailed analysis in the Special Committee Report speaks for itself in its ultimate conclusion and reasoning; moreover, the Special Committee

is carefully assessing what path will be the most likely to recover actual value on account of the identified claims in light of the specific assets of CSCEC Holding and the jurisdictions in which they are located. Simply put, as has already been communicated to BMLP, the Special Committee believes that it is pursuing the path that is most likely to result in a meaningful recovery.

45. BMLP has provided no argument or analysis to the contrary. To begin, rather than providing a draft complaint outlining its proposed veil piercing action that would enable the court to perform an analysis of the *Twombly* factor described above, the Standing Motion seeks an open-ended grant of derivative standing to pursue any number of poorly-identified "alter ego, veil piercing, or similar claims" in connection with the Judgment. Further, the Standing Motion does not meaningfully attempt to grapple with the defenses that would likely be asserted to such claims, trying to gloss over those by focusing on the Special Committee Report's use of [redacted] while ignoring that the Special Committee Report's analysis of [redacted], and by referencing the Judgment in the state court litigation, which is inapposite.[9] This simplistic characterization of the proposed litigation does not meet the required legal standard and does not begin to overcome the thoughtful business judgment of the Special Committee in deciding the best way to press any claims it identified.

46. Even if a claim is colorable, a movant must also provide evidence to show that prosecuting the claim would benefit the estate, as shown in a cost-benefit analysis. To that end, courts consider all relevant facts and evidence presented, usually in light of four factors,

[9] BMLP's reference to findings in the Judgment as to veil piercing between CCA and its two nondebtor affiliates is simply inapposite for a discussion on the merits of a claim to pierce the veil of CCA to reach the assets of CSCEC Holding, which was not addressed by the Judgment in any meaningful way, nor briefed, nor argued in the prepetition proceeding. For the avoidance of doubt, the Judgment contained virtually no findings as to CSCEC Holding, other than it was the parent company of CCA.

(i) the probability of (x) success and (y) financial recovery; (ii) the anticipated costs of litigation; (iii) proposed fee arrangements; and (iv) the anticipated delay to the bankruptcy estate. *See Diocese of Camden*, 2022 WL 884242, at *5; *see also Invitae* District Court Opinion, at *9. To that end, parties often provide expert testimony or valuations, and conclusory statements are not sufficient. *See id.* (conclusory statement that litigation costs would be insignificant were not sufficient, and movant's expert opinion was found not to be persuasive because it focused just on a maximum recoverable value).

47. Here, BMLP has, again, provided no evidence in support of a cost-benefit analysis, attempting to skim over this factor by repeatedly mentioning the amount of the Judgment and suggesting that it will pay its own costs of litigation. Even if the Court gave weight to representations by counsel that BMLP will cover fees and costs associated with pursuing the claim, which may or may not include costs incurred by the estate for its involvement including providing necessary factual information that is available only to CCA, BMLP's offer almost certainly does *not* include the litigation costs of CSCEC Holding itself, which would meaningfully erode collectible value.

48. As noted in the Special Committee Report and completely overlooked by BMLP,

[redacted]

Unlike BMLP's sue-first-and-ask-questions-later modality, the Special Committee is responsibly engaging in the work now to understand the actual value of the veil piercing claim, the value of CSCEC Holdings' assets, and the best way to maximize recoveries. BMLP's unwillingness to do so leads to a failure to meet the *Invitae* requirements for derivative standing.

49. ***Element No. 4 – Debtor Unjustified in Action.*** A movant's failure to demonstrate that a debtor's non-pursuit of a claim was unjustifiable (*e.g.*, failed to maximize the value of the bankruptcy estate) provides independent grounds to deny derivative standing, whether or not the underlying claims are colorable. *See Invitae* Supplemental Findings, at *6, *aff'd* by *Invitae* District Court Opinion, at *8, *10–11. BMLP completely disregards this element in its analysis, conflating it with the refused demand elements, and provides no relevant evidence here. Therefore, BMLP cannot carry its burden of proof, and derivative standing should be denied.

50. In one recent case, Judge Kaplan praised the use of an independent director, commenting that the most dispositive evidence for the court's denial of a derivative standing motion was testimony from an independent director showing the debtor's process to review potential claims and weigh options with the advice of professionals overseen by the independent director. *See Invitae* Bench Ruling. In affirming the bankruptcy court's denial of derivative standing, the district court also noted that, as here, the independent director had not worked with the debtors or their professionals before, had extensive experience serving on boards and conducting investigations, and the two-part process followed by the independent director—namely, gathering and reviewing books, records, and relevant documents, and then conducting interviews—made sense. *See Invitae* District Court Opinion, at *12.

51. The fulsome, thoughtful ongoing investigation by the Special Committee in this case is materially similar to the approach taken by the independent director in *Invitae* that both the bankruptcy court and the district court there praised, though with two differences that further underscore the strength of the Special Committee's process in this case. First, the investigation here goes even further than that in *Invitae* because, here, the Special Committee is overseeing professionals in performing a follow-up analysis on recoverability of the claims and continues to

actively press CSCEC Holding to provide a meaningful monetary settlement of these claims before seeking to commence formal litigation, [redacted] Second, the work of the Special Committee is subject to review by the Examiner, so the Court will have an additional data point by which to view the work of the Special Committee.

52. Overall, as to derivative standing, BMLP simply has not carried its burden, and thus the requested relief should be denied. First, while BMLP did make a demand on the Special Committee, BMLP has not shown that CCA's choice not to follow BMLP's exact proposed path is the same as declining to pursue the veil piercing claims. [redacted] Moreover, the Special Committee is continuing to finalize its ongoing recovery analysis on the heels of a thoughtful investigative process and fulsome report, and is actively engaged in pressing CSCEC Holding toward a meaningful monetary settlement. Accordingly, given that "pursuit" is broadly defined and that courts should grant deference to a debtor in possession's reasonable business judgment about how to manage assets of the estate, CCA is indeed pursuing the veil piercing claim, albeit not in exactly the way BMLP would prefer. A difference of opinion about strategy does not provide a basis to grant derivative standing. Further, BMLP has not provided a serious argument in favor of colorability as that term is applicable to the requested relief, and certainly has not provided sufficient evidence or analysis to override the Special Committee's judgment about the costs and benefits of pursuing litigation now. In light of this, and the thoughtful independent judgment being exercised by the Special Committee in concert with its professionals, BMLP simply cannot show that its proposed strategy for pursuing veil-piercing claims should be substituted for the Special Committee's approach.

II. Veil Piercing and Related Claims Constitute Estate Property Because They Arose Prepetition, CCA Could Have Brought Them Under State Law, and They Do Not Solely Impact BMLP. Accordingly, the Bankruptcy Code Deprives BMLP of Statutory Authority to Bring Veil Piercing Claims Directly.[10]

53. The bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case" under 11 U.S.C. § 541(a)(1), and this definition is construed broadly to include all kinds of property, including causes of action. *See Board of Trustees of Teamster Local 863 Pension Fund vs. Foodtown, Inc.*, 296 F.3d 164, 169 (3d Cir. 2002). The trustee (or debtor-in-possession) has the exclusive authority under section 541 to assert causes of action belonging to the bankruptcy estate. *See, e.g.*, *In re Aliera Cos., Inc.*, Case No. 21-1001 (TMH), 2025 WL 2091090, at *5 (Bankr. D. Del. July 24, 2025). The test provided by the Third Circuit in *In re Emoral, Inc.* for whether a cause of action constitutes estate property is two-pronged: (1) the claim must have "existed at the commencement of the filing and the debtor could have asserted the claim on his own behalf under state law," and (2) it must be "a general one, with no particularized injury arising from it." 740 F.3d 875, 879 (3d Cir. 2014).

54. If a cause of action satisfies both prongs of the test articulated in *Emoral, Inc.*, it constitutes property of the estate that can be asserted solely by the trustee (or debtor in possession) and not an individual claimant. *Aliera Cos., Inc.*, 2025 WL 2091090, at *5; *see In re Wilton Armetale, Inc.*, 968 F.3d 273, 282 (3d Cir. 2020) ("If [claims are property of the estate], then only the bankruptcy trustee has the statutory authority to bring them unless abandoned."); *In re TPC Group Inc.*, Case No. 22-10493 (CTG), 2023 WL 2168045, at *5 (Bankr. D. Del. Feb. 22, 2023) ("When a claim against a third party does belong to the debtor before the bankruptcy, however,

[10] CCA reserves the right to supplement this objection in the event the relief requested in the Standing Motion is construed to include entry of an advisory opinion. CCA also reserves the right to supplement this objection on grounds that the Standing Motion should be filed as a separate adversary proceeding.

only the trustee, not the creditors, may assert it."). "[O]nce a cause of action becomes the estate's property, the Bankruptcy Code gives the trustee, and only the trustee, the statutory authority to pursue it." *Wilton Armetale, Inc.*, 968 F.3d at 280. Even if another party has constitutional standing to pursue a claim, if the same claim is also property of the estate, the Bankruptcy Code denies the nondebtor party the authority to bring such claim. *Wilton Armetale, Inc.*, 968 F.3d at 280–83 (explaining that statutory standing refers to the authority to pursue a claim on the merits and is separate from constitutional *Lujan* standing); *see also In re Buildings by Jamie, Inc.*, 203 B.R. 36, 43–44 (Bankr. D.N.J. 1998) (after finding that alter ego claims were property of the estate, dismissing all non-debtor creditors that were joined as plaintiffs to the complaint). The Third Circuit has observed that this applies in the context of "state-law claims that creditors can assert against an insolvent debtor's fiduciaries." *Wilton Armetale, Inc.*, 968 F.3d at 282–83

55. ***Prong No. 1 – Prepetition, Prosecutable Claim.*** Though BMLP may not like the case law, it is clear that, with respect to veil piercing and similar claims, the first prong—whether the claim existed as of the petition date and the debtor could have asserted the claim—is satisfied here and should not be at issue. Indeed, many courts within in this circuit have recently found that veil piercing and similar claims are property of the estate, including in cases where the claims arise under Delaware law, when based on alter ego theories, and when the complaint (a draft of which BMLP has not supplied) alleges plundering of a corporate debtor in order to prevent collection attempts by a prepetition judgment creditor.

- The Third Circuit in *Wilton Armetale, Inc.*, found that a derivative theory of recovery under Pennsylvania law—based on alleged prepetition plundering of a corporate debtor to hinder its ability to satisfy a prepetition judgment creditor—satisfied the first prong and, ultimately, constituted property of the bankruptcy estate (but was abandoned by the trustee in accordance with the terms of an abandonment order). 968 F.3d at 281, 283.

- The Third Circuit in *Emoral, Inc.* found that successor liability claims, whether characterized as arising under New York or New Jersey law, satisfied the first prong and, ultimately were causes that were property of the estate. 740 F.3d at 879–81.

- Judge Kaplan found that certain claims "through allegations of successor liability, alter ego, or some similar theory," whether characterized as arising under Delaware, New Jersey, New York, or California law, satisfied the first prong and, ultimately, constituted property of the estate. *See In re Whittaker, Clark, & Daniels*, 663 B.R. 1, 22–23, note 12 (Bankr. D.N.J. 2024).[11]

- Judge Stripp found that an alter ego action based on alleged fraudulent actions of a corporation's principals under New Jersey law satisfied the first prong and, ultimately, constituted property of the estate. *See In re Buildings by Jamie, Inc.*, 203 B.R. 36, 43–44 (Bankr. D.N.J. 1998) (collecting cases from other circuits showing similar outcomes).

- Judge Sontchi found that alter ego claims under Delaware law to recover on account of indemnification obligations satisfied the first prong and, ultimately, constituted property of the estate. *See In re Maxus Energy Corp.*, 571 B.R. 650, 658-59 (Bankr. D. Del. 2017).

- Judge Goldblatt found that a veil piercing action under Delaware law to recover on account of tort claims satisfied the first prong and, ultimately, constituted property of the estate. *See In re TPC Group Inc.*, 2023 WL 2168045, at *5–7.

- Judge Horan found that vicarious liability claims, "such as alter ego claims" under Montana law satisfied the first prong and, ultimately, constituted property of the estate. *See In re Aliera Cos., Inc.*, 2025 WL 2091090, at *7.

56. ***Prong No. 2 – General Injury.*** The touchstone for a non-unique, general claim is whether the claim is "based on an injury to the debtor's estate that creates a secondary harm to all creditors, regardless of the nature of their underlying claims against the debtor". *See Wilton Armetale, Inc.*, 968 F.3d at 282–83. Stated differently, a general claim, to the extent recovered,

[11] BMLP is plainly incorrect in its analysis that *Whittaker* is inapplicable because the court there did not "address Delaware law on a creditor asserting veil piercing; instead, citing a New York state court decision on successor liability[.]" Judge Kaplan specifically addressed veil piercing claims arising under Delaware law. *See Whittaker, Clark, & Daniels*, 663 B.R. at n. 12 (citing *Gadsden v. Home Pres. Co.*, 2005 WL 485468, at *1 (Del. Ch. Feb. 20, 2004) for the proposition that a "judgment creditor could pierce corporate veil of corporate judgment debtor").

inures to the benefit of all creditors by enlarging the assets of the estate, which promotes the orderly distribution of assets in bankruptcy by funneling asset-recovery litigation through a single plaintiff, the trustee. *See id.*

57. Here, BMLP's argument is a materially similar fact pattern to the one in *Wilton Armetale, Inc.* where the derivative claims were found to be general claims (and estate property). *Wilton Armetale, Inc.*, as here, involved prepetition judgment creditors. The judgment creditors there alleged some kind of plundering of the corporate judgment debtor, as BMLP appears to allege here (with no evidentiary basis). Further, the judgment creditors there also alleged that the depletion of assets was done in a specific attempt to hamper their collection efforts, as BMLP does here. In short, the veil piercing and similar theories of recovery BMLP seeks to assert are general claims, as was the outcome in *Wilton Armetale, Inc*.

58. Further, the Court should not be persuaded by BMLP's reliance on *Foodtown*, which is the sole case cited by BMLP in support of its position that veil piercing claims can constitute personal, not general claims under the *Emoral* test. There, the court itself provided two factual distinctions to explain why the relevant claims came out differently from other cases. The court explained that the relevant claim (i) pertained to a statutorily-imposed withdrawal liability where "there is a federal interest supporting disregard of the corporate form to impose liability" explicitly provided under the amended ERISA statute and (ii) constituted a postpetition liability because the missed payments occurred approximately six weeks after the petition date. *See Foodtown*, 296 F.3d at 168–71. Neither of these facts, both important to the *Foodtown* court, are relevant here, so the Court should not rely on the analysis in *Foodtown* in its analysis here. Instead, the Court should be persuaded by the analysis repeated in many recent cases that veil piercing and similarly styled derivative claims are property of the estate and, in turn, even if another party would

ordinarily have standing to pursue such a claim prior to the bankruptcy case, parties other than the trustee lose the authority to do so by operation of the Bankruptcy Code.

III. The Automatic Stay Applies if Movant Could Bring the Veil Piercing Claims Because CCA, as a Necessary Party, Must be Included in Such Proceedings. BMLP Has Not Carried Its Burden to Show Cause to Modify the Automatic Stay.

59. The automatic stay of section 362 of the Bankruptcy Code is "one of the most fundamental protections granted the debtor under the Bankruptcy Code." *In re Rexene Prods. Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citing *Midlantic Nat. Bank v. New Jersey Dep't of Environmental Protection*, 474 U.S. 494, 503 (1986)). A general purpose of the automatic stay is "to avoid interference with the orderly liquidation or rehabilitation of the debtor," *Borman v. Raymark Ind., Inc.*, 946 F.2d 1031, 1036 (3d Cir. 1991), and provide a breathing spell while the debtor attempts to reorganize its affairs, *see McCartney vs. Integra Nat'l Bank North*, 106 F.3d 506, 509 (3d Cir. 1997); *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991). Section 362(d)(1) of the Bankruptcy Code permits a court to grant relief from the automatic stay "for cause" after notice and hearing, as discussed further below. 11 U.S.C. § 362. Importantly, the Third Circuit has opined that, even if a creditor intends its collection efforts as to a nondebtor, the automatic stay applies if a debtor entity were named on a state-law petition as a necessary party. *See McCartney vs. Integra Nat'l Bank North*, 106 F.3d at 510–11 (finding that it would violate the automatic stay to make a debtor-guarantor party in name only as to a state-law deficiency petition against a nondebtor borrower merely so that the lender would not waive its rights to any deficiency claim as to the debtor-guarantor).

60. ***CCA as a Necessary Party.*** BMLP argues that "[t]he anticipated [veil piercing or equitable remedies] proceeding is a new action that New York law affords to a judgment creditor." Standing Motion, at ¶ 56. However, BMLP overlooks that a New York court would require the

Debtor to be joined in any veil piercing attempt. Under New York law, which was applied for purposes of the predicate litigation (and, importantly, for its veil piercing findings as between the three defendant entities), it is "well settled law" that an alleged dominated "dummy" entity and the alleged dominating entity must *both* be party to any veil piercing action.[12] *See Intelligent Prod. Sol'ns, Inc. vs. Morstan General Agency, Inc.*, 5 N.Y.S.3d 328, at *2–3 (N.Y. Sup. Ct. 2014) (collecting cases). New York appellate courts have observed the same in other cases.[13] Accordingly, even assuming *arguendo* that BMLP could proceed directly on a veil piercing action, because a New York court would require CCA to be included in any veil piercing proceedings as a necessary party, the automatic stay would not only clearly apply, but also be violated, absent leave from this Court after notice and hearing.

61. Turning to the standard for modifying the stay, "the term 'cause' as used in section 362(d) has no obvious definition and is determined on a case-by-case basis." *In re Integrated Health Services, Inc.*, Case No. 00-389 (MFW), 2000 Bankr. LEXIS 1319, *4–5 (Bankr. D. Del. 2000); *see also In re Lincoln*, 264 B.R. 370, 372 (Bankr. E.D. Pa. 2001) ("Each request for relief for 'cause' under [section] 362(d)(1) must be considered on its own facts."). The movant has the burden of proof to "produce evidence that cause exists to grant relief from the

[12] For the avoidance of doubt, for purposes of this objection, CCA takes no position at this time on the issue of what law should apply, either procedurally or substantively to veil piercing.

[13] In *Mannuci vs. Missionary Sisters of Sacred Heart of Jesus*, a New York appeals court affirmed a lower court's decision to grant a motion to dismiss where one of the alter ego parties was not included in a complaint because they were in bankruptcy and the plaintiff had not obtained relief from the automatic stay. A.D.3d 471, 471–72 (N.Y. App. Div. 1st Dep't 2012). In *Corman vs. LaFountain*, a New York appeals court reversed the lower court's ruling and held that a complaint—filed solely against an alleged dominating individual that sought to pierce the veil of an LLC to reach the individual's assets—should have been dismissed because the LLC was a necessary party that could not be properly joined outside of the LLC's bankruptcy proceedings where there was no showing that the estate had abandoned its interests in any veil piercing claim against the individual. 835 N.Y.S.2d 201 (N.Y. App. Div. 2d Dep't 2007).

automatic stay." *See In re DBSI, Inc.*, 407 B.R. 159, 166 (Bankr. D. Del. 2009) (citing *In re Sonnax Industries, Inc.*, 907 F.2d 1280, 1285 (2d Cir. 1990)). In determining whether "cause" exists, courts within the Third Circuit consider the following three factors:

> (1) the prejudice that would be suffered by the debtors should the stay be lifted;
>
> (2) the balance of the hardships facing the parties if the stay is lifted; and
>
> (3) the probable success on the merits if the stay is lifted.

In re Pursuit Athletic Footwear, Inc., 193 B.R. 713, 718 (Bankr. D. Del. 1996) (citing *Rexene Prods.*, 141 B.R. at 576).[14]

62. In particular, Factor No. 2, "whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor," is often considered the most important factor, and courts consider the effect modifying the stay will have on administration of a debtor's chapter 11 case. *In re DBSI*, *Inc.*, 407 B.R. at 166–67 ("Courts also place emphasis on whether lifting the automatic stay will impede [sic] the orderly administration of the debtor's estate."); *see also In re Penn-Dixie Indus., Inc.*, 6 B.R. 832, 836 (Bankr. S.D.N.Y. 1980) ("Interference by creditors in the administration of the estate, no matter how small, . . . is prohibited."). Further, to establish cause, the movant "must show that 'the balance of hardships from not obtaining relief tips *significantly* in [its] favor.'" *In re Am. Classic Voyages, Co.*, 298 B.R. 222, 225 (Bankr. D. Del. 2003) (emphasis added); *see also In re DBSI, Inc.*, 407 B.R. at

[14] Courts may also consider 12 factors described in other cases in this Circuit in the context of permitting litigation against a bankruptcy debtor to continue elsewhere, though those cases are not directly on point because any veil piercing action would be separate from the pending appeals of the prepetition litigation and the merits thereof. *See In re Risis*, 2025 WL 947185, at *2 (Bankr. D.N.J. Mar. 27, 2025) (citing *In re Mid-Atlantic Handling Sys., LLC*, 304 B.R. 111, 130 (Bankr. D.N.J. 2003)). These 12 factors include a consideration of the balance of the harms on the parties related to the impact of the stay and whether the parties are ready for trial in the other proceeding. The Debtor respectfully submits that both of these factors weigh in favor of maintaining the automatic stay.

166 (considering whether the hardship to the movant by maintenance of the stay "considerably outweighs" the hardship to the debtor).

63. As to Factor No. 3, while courts have characterized the requisite showing as "slight," more than a mere reference to the bare allegations must be provided. *See Rexene Prods.*, 141 B.R. at 578 (probability of success on the merits shown where debtor-defendant's summary judgment motion had already been denied in the state court action).

64. ***Factor No. 1 – Prejudice to the Debtor.*** BMLP fails to account for the practical realities to CCA's efforts in this case if the automatic stay were modified. Modifying the stay now to permit a veil piercing action to go forward in another forum—at a time when the Special Committee is actively in the process of pursuing this same claim—is highly prejudicial to CCA. Not only would CCA need to expend time and, presumably, DIP funds—to pay for its professional fees for discovery and discovery-related issues, monitoring the proceedings, responding to papers filed, and likely making appearances before the court at a minimum—but it would also divert the attention of CCA and its professionals, and therefore likely delay the negotiation of an endgame to this chapter 11 case.[15] Given the Standing Motion's attack on the conduct of interviews as part of the Special Committee's investigation, it appears that BMLP would need substantial additional discovery for a veil piercing action in the form of depositions. If so, this would subject CCA management to a time-consuming process at a time when management should, instead, focus its efforts on how to exit this chapter 11 case in a value-maximizing way. Indeed, as this Court has observed, the most likely path forward in this chapter 11 case is a consensual settlement among

[15] BMLP argues that any recovery on account of the veil piercing claim would reduce its claim against the Debtor. *See* Standing Motion, at ¶ 58. However, because any veil piercing claim would constitute property of the estate, as discussed above in Section I, any recovery would flow to the estate generally and then, in turn, flow to creditors in accordance with the terms of a plan.

CCA, CSCEC Holding, and BMLP, and not only would CCA be distracted by modifying the stay, but BMLP and CSCEC Holding would also have divided attention. Accordingly, this factor weighs against modifying the automatic stay.

65. ***Factor No. 2 – Balance of Hardships.*** BMLP fails to show how this important factor weighs in favor of modifying the stay, if BMLP addresses it at all. Given that the balance must tip *significantly* in movant's favor, if the movant provided no evidence of any hardship, this factor must weigh against modifying the automatic stay. Here, BMLP has made no argument as to why maintaining the stay would cause it hardship when the Special Committee is actively pressing the claims, nor why, after CCA has been in chapter 11 for months and is making continuous and meaningful progress, the stay must be modified *now* to avoid a hardship to BMLP.

66. ***Factor No. 3 – Probability of Success.*** BMLP has failed to show probability of success for veil piercing, other than a bare statement mischaracterizing the Special Committee Report. Importantly, the Special Committee Report actually concluded that [redacted] *See* Special Committee Report, at 71. In so concluding, the report analyzed [redacted]. The report concluded that [redacted]

67. Overall, given that BMLP made no demonstration of *any* hardship, let alone a hardship that would substantially overwhelm the prejudice and hardship the Debtor would face if the stay were modified, and that the Special Committee Report identifies [redacted], BMLP has not carried its burden to show cause under section 362(d)(1). Accordingly, the Court should deny this relief.

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Conclusion

For the reasons set forth herein, the Debtor respectfully requests that the Court deny the Standing Motion in its entirety and grant such other relief as the Court deems just and proper.

Dated: September 8, 2025

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